**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 8996 of 1994**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MANEKLAL P PATEL - Petitioner(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR SR PATEL ON BEHALF OF MR AJ PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
MR AY KOGJE AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**Date : 10/01/2007**

**ORAL JUDGMENT**

1. Mr.S.R. Patel, learned counsel for the petitioners and Mr.A.Y. Kogje, learned A.G.P. for respondent No.1 – State.

2. The parties are finally heard.

3. The petitioners being aggrieved by the order dtd.24/8/1993 passed in Fragmentation Case No.2 of 1990-91 by the learned Deputy Collector, Dhrangadhra directing eviction of the petitioners under sec.9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and order dtd.3/1/1994 passed in SRD/CON/SNR/6 of 1993 where-under the first order was confirmed, have filed this writ application seeking quashing of the said orders.

4. Short facts necessary for disposal of the present writ application are that the present petitioners had purchased 1 Acre and 23 Gunthas of land of Village Bamanava, Taluka Dasada, District Surendranagar out of Survey Nos.28/1 under a registered sale deed dtd.16/6/1984. Entry No.1080 was made on 15/8/1984 and the same was certified on 7/11/1984. On 1/3/1993 a notice was issued by the Deputy Collector to the petitioners under sec.9 of the Act to show cause as to why the transfer be not held to be in violation of the provisions of the Fragmentation Act.

5. The petitioners filed his reply-cum-show cause and submitted to the authority that they are the holder of the

contiguous land bearing Survey Nos.29 and 30, even the purchase made by them would not attract the provisions of the Fragmentation Act, because the land purchased by them would be included in their holding and would avoid fragmentation. He also submitted that for proper use of the agricultural land, the land in dispute was purchased by him.

6. The submission made by the petitioners could not convince the Deputy Collector, who, in his turn, held the transaction to be void and ordered eviction of the petitioners. Being aggrieved by the said order, the petitioners filed the above referred revision which came to be dismissed by the Deputy Secretary, (Disputes-Appeals), Revenue Department.

7. Mr.Patel, learned counsel for the petitioners, placing reliance upon a Division Bench Judgment of this Court in the case of Valjibhai Jagjivanbhai Vs. State of Gujarat, reported in 2005(3) G.L.R. submits that from the ratio of the said judgment, it would clearly appear that the powers under sec.9 of the Fragmentation Act are to be exercised within a reasonable time and if there is inordinate delay, the authority would not be entitled to exercise the said powers. His submission is that in the

matter of Ranchhodbhai Lallubhai Patel Vs. State of Gujarat, reported in 1984 (2) G.L.R. 1255, period of seven years was taken to be inordinate delay. His submission is that in the present case, initiation of the proceedings almost after lapse of nine years would be bad.

8. Mr.Kogje, learned AGP for the respondent – State submits that in view of the Division Bench Judgment of this Court, the question of inordinate delay is required to be considered on the strength of the facts which are available in the records. His submission is that in the matter of Valjibhai Jagjivanbhai (supra), the High Court has made the observations in view of the typical facts of the case, firstly, that the delay was of almost 23 years, the application came to be made by the heir and successor of the transferor and within a period of 23 years, the transferee – purchaser had spent lacks of rupees on development of the land. He submits that present is a case where no change has been brought about in the land and for this reasons, this Court should not interfere in the matter.

9. Valjibhai Jagjivanbhai (supra) was a case where reference was made by the learned Single Judge in view of the conflicting opinion of the learned Single Judges of this

Court. The question referred to the Division Bench was "Can inordinate delay come in the way of authority acting under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 in declaring the sale transaction to be invalid on the ground of contravention of relevant provisions contained therein?."

10. The Division Bench considered various Single Bench judgments and the judgment of the Apex Court to consider the question that when the limitation is not provided under a particular Act for taking an action, within what time the authority is required to take action. The Division Bench in para 23 of the judgment while answering the reference observed as under;-

> *"23, Looking to the aforesaid different situations, there is no-doubt in our mind that even the void transaction under section 9(1) if allowed to remain effective for considerably long period, the authority named therein will be precluded from initiating proceedings to annul it. The ratio laid down by the Apex Court in the decisions cited by Mr. Patel clearly states that even the void transaction cannot be said to be nonexistent in all cases and in all situations. It can remain effective and in existence till it is*

*invalidated and set aside. If its existence is allowed to remain for a considerable period and with the passage of time it brings about several changes, creating valuable rights in favour of considerable section of people, it is difficult to accept the proposition that despite the change the Collector would be entitled to exercise power under sub-section (3) of section 9 of the Act. Similar observations can also be made with regard to the land wherein no change is brought about, but number of years have passed after the transfer against the provisions of the Act has taken place. In our opinion when the things have been allowed to remain as such for years together, the purchaser cannot be deprived of his possession so as to render indirect benefit to the seller who was equally responsible for entering into such illegal transaction. Thus, in our view, when the authority had considerable opportunities to know about the transaction and despite that, has not taken any action thereon for years together, such authority cannot be allowed to exercise powers conferred upon it at a belated stage. The concept of reasonableness of time will equally apply in such cases. We, therefore, hold that even powers conferred upon the Collector under sub-sections (2) and (3) of section 9 are required to be exercised within a*

*reasonable time. From these observations made by the Hon'ble Division bench, it would clearly appear that whether a change is brought about in the land or no change is brought about, inordinate delay would always block the way of the authority from taking an action."*

11. Other Single Judge Judgments which were taking view that if there is a void order, it would continue to be void and can be set aside at any time were overruled by the Division Bench. Under the circumstances, being bound by the ratio laid down by the Division Bench of this Court in the case of Valjibhai Jagjivanbhai (Supra), I must hold that the question of delay / inordinate delay would always come in the way of the authority in exercising its revisional powers. The distinction put-forth by Mr.Kogje, learned AGP, in fact, is immaterial.

12. In the matter of Ranchhodbhai Lallubhai Patel (supra), the learned Single Judge of this Court came to the conclusion that a period of seven years would constitute inordinate delay and would not allow the authority / revisional authority to take an action under sec.9 of the Act.

13. If a period of seven years were considered to be

inordinate delay, period of nine years certainly can be held to be inordinate delay. Such an action after nine years can always be condemned as inordinate delay as inordinate delay.

14. The action taken by the authorities, in view of the judgment of the Division Bench in the case of Valjibhai Jagjivanbhai (Supra) and other Single Bench Judgments of this Court, cannot be approved. The impugned order dtd.24/8/1993 passed in Fragmentation Case No.2 of 1990-91 by the learned Deputy Collector, Dhrangadhra and confirmed by the Secretary, Revenue dtd.3/1/1994 in Case No.SRD/CON/SNR/6 of 93 deserve to and are accordingly quashed. The petition is allowed. Rule is made absolute. No costs.

(R.S. GARG, J.)

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